

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TIMOTHY JACKSON,
Plaintiff,

VS.

LAURA WRIGHT, et al
Defendants.

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Civil No. 4:21CV33

MOTION HEARING
BEFORE THE HONORABLE AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE
OCTOBER 29, 2021

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P R O C E E D I N G S

THE COURT: We're here in case 4:21CV33, Timothy Jackson vs. UNT, et al.

And for the Plaintiff?

MR. ALLEN: Michael Allen for the plaintiff, Your Honor.

THE COURT: Just make sure your mic is on, just because of the acoustics in here, and for the court reporter.

But for the defense?

MS. CORBELLO: Courtney Corbello, Your Honor.

THE COURT: Okay. Very good.

And of course, you know why we're here, because of my order. I'm just trying to decide an issue, and it's unclear. There was conflict in the paperwork on the motion. So I assume you have evidence you want to present?

MR. ALLEN: Yes, Your Honor.

THE COURT: Is there a factual dispute about this issue, in terms of what his status with the journal was or is?

MR. ALLEN: Opposing counsel and I have not talked about it. I assume they still dispute this fact, so we came prepared to put on evidence. If they would like to concede the fact, of course we would of course accept

1 that result. But --

2 THE COURT: I don't think they are going to do
3 that, are they?

4 MS. CORBELLO: No, Your Honor.

5 THE COURT: Okay. So go ahead and put your
6 evidence on, and then we'll have a discussion about it.

7 MR. ALLEN: All right. Your Honor, I would like
8 to call Timothy Jackson, the Plaintiff, to the stand.

9 THE COURT: Okay. Very good, sir. Would you
10 raise your right hand and be sworn in.

11 THE CLERK: You do solemnly swear the testimony
12 you shall give in the case now on hearing shall be the
13 truth, the whole truth, and nothing but the truth so help
14 you God.

15 THE WITNESS: I do.

16 THE COURT: Thank you. Go ahead and have a seat.
17 Go ahead and proceed.

18 TIMOTHY JACKSON,
19 after having been sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. ALLEN:

22 Q So, Professor Jackson, can you just state your
23 full name for the record, please.

24 A Timothy Lynn Jackson.

25 Q And can you explain to the Court your position at

1 the University of North Texas?

2 A I'm a full professor of music theory with tenure,
3 and I am also a distinguished research professor of music
4 theory. There are about 10, or slightly more now,
5 distinguished research professors.

6 Q And as a distinguished research professor, you
7 said there were about 10. Do you mean in the entire
8 University or in the college of music?

9 A I mean in the entire University.

10 Q And of course, we're here to discuss the Journal
11 of Schenkerian Studies, and I was going to ask you to explain
12 who publishes the Journal of Schenkerian Studies.

13 A Well, as of 2009, the University of North Texas
14 was our official publisher and we had a contract with them to
15 publish the journal.

16 Q And the University of North Texas press is a unit
17 of the University of North Texas, correct?

18 A Correct.

19 Q When did you publish Volume 12 of the Journal of
20 Schenkerian Studies?

21 A It was published at the end of July 2020, but the
22 actual issue was assembled in March of 2020.

23 Q By "assembled" what do you mean by that?

24 A I mean that we put together all of the
25 contributions and formatted the journal and sent it to the

1 publisher. And then the publisher took about three months to
2 produce the journal. There were problems because of COVID.

3 Q I see. And has there been a Volume 13?

4 A A Volume 13 was well in hand because during those
5 three months we were already well advanced in -- in producing
6 that next volume.

7 Q All right. And has there been a Volume 13 then?

8 A No.

9 Q Why hadn't the JSS --

10 MR. ALLEN: Or if it pleases the Court, JSS is a
11 common abbreviation for the journal.

12 THE COURT: That's fine.

13 BY MR. ALLEN:

14 Q All right. Why hasn't the JSS published another
15 volume since July 2020?

16 A Because the journal has been essentially on ice
17 since that time.

18 Q All right. And that's been over 15 months,
19 correct?

20 A Correct.

21 Q If you could just give the Court some background
22 about what resources UNT provided to you in your position as a
23 faculty member on the editorial staff of the JSS.

24 A Well, the journal started publishing around 2005.
25 And at that time the then Dean of the school gave me a

1 research assistant to help me produce the journal. And that
2 continued up through 2020. The definition of the position was
3 changed however, but that was the main resource that was
4 provided to the journal.

5 Q All right. And is there any other individual at
6 the University of North Texas who has been continuously
7 associated with the journal besides yourself?

8 A Yes, there was Professor Steven Slottow. He --
9 he's now a full professor.

10 Q When did he join the journal?

11 A Well, we worked on it together actually since
12 about 2003, and we were serving together throughout that whole
13 period until 2020 as faculty advisers to -- to the journal.

14 Q And just briefly, you mentioned a position had
15 been redefined. What -- what position were you talking about?

16 A I was talking about the editorship of the journal.

17 Q And --

18 A So earlier, previously up until 2019 the journal
19 had been edited by a doctoral student. That position was
20 voluntary, not paid. And the student assistant would help the
21 editor with certain tasks like mailings and so forth. But
22 then the position was redefined so that the person who
23 occupied that TA position would now be actually editing the
24 journal. So that was a major change of policy. And it was
25 discussed at various levels and there was some disagreement as

1 to whether we should follow that course, but that was the
2 course that we followed. And at that point there was a new
3 editor in training who occupied the position. That is when
4 the journal stopped publishing.

5 Q And was that Levi Walls?

6 A Yes, his name was Levi Walls. He was a graduate
7 student -- doctoral student.

8 Q And can you explain your relationship, your
9 obligations and duties as a faculty member on the editorial
10 staff of the journal?

11 A Sure. So until that changed, the students, the
12 doctoral students who occupied that position actually had
13 quite a bit of leeway. They accepted and solicited articles,
14 they sent out articles to experts for a review. We did not
15 always suggest to them the people who would serve as leaders.
16 They had quite a bit of latitude there.

17 They also had latitude in evaluating the
18 responses, the readers responses. We served really as an
19 advisory role, and we were primarily concerned to help them if
20 there -- there were certain difficult, let's say, decisions
21 that had to be made, maybe where one reader was in favor to or
22 against, that kind of thing. So we were more advisers.

23 Or, for example, when there were book reviews and
24 the review was very negative we -- we sometimes advised the
25 editors on how to tone down the reviews, things like that.

1 But we did not micro manage the journal.

2 Q And when you refer to "we" who are you referring?

3 A I'm referring to myself and Professor Slottow.

4 Q I see.

5 MR. ALLEN: And I believe the Court is aware from
6 the papers of the change in July of 2020. And to save
7 time, I would ask him about the aftermath of the 2020
8 incident, if it pleases the Court. Otherwise, we can
9 also --

10 THE COURT: Yes, you don't need to go into the
11 incident.

12 BY MR. ALLEN:

13 Q All right. So -- so I'm going to fast forward to
14 the latter part of 2020 after the ad hoc panel report came out
15 on November 25, 2020. And what was the fall out? What
16 changed with regards to the journal after that time, Professor
17 Jackson?

18 A Well, I can't really answer the question because I
19 feel that I was removed from the journal completely, so I had
20 nothing further to do with the journal.

21 Q And did you make any suggestions for how the
22 journal could be reorganized, or strengthened, or somehow make
23 a response to the impulses that were coming from the
24 University of North Texas at that time?

25 A I did. In my response to the ad hoc report I made

1 various suggestions. I proposed a set of scholars who would
2 possibly be willing and interested -- and in fact, I knew they
3 were -- in helping to take over the editorship. Because we
4 felt that in the current climate, the current, I would like to
5 say, repressive climate where academic freedom is challenged,
6 we needed somebody who was tenured to be the editor of the
7 journal, to protect its academic freedom and integrity.

8 Q And did you propose that you remain involved in
9 the journal yourself?

10 A I did.

11 Q All right. And I -- I'm going to direct your
12 attention to the document that's on the screen.

13 MR. ALLEN: And, Your Honor, this had been marked
14 as Exhibit 2.

15 BY MR. ALLEN:

16 Q And do you recognize this document, Professor
17 Jackson?

18 A Yes, I do.

19 Q What is this document, please, for the Court?

20 A This was my response to the ad hoc committee
21 report.

22 Q And you were -- were you directed to make this
23 response?

24 A I was.

25 Q By whom?

1 A By Professor -- by Provost Cowley.

2 Q Jennifer Cowley?

3 A Yes.

4 Q All right. And if you could turn to the second
5 page of that document, please. I'm sorry, it's a little bit
6 crooked, I understand.

7 Do you see the paragraph that begins on the
8 bottom of that page?

9 A Yes.

10 Q Is this the plan for reorganization that you had
11 just discussed?

12 A Yes.

13 Q And this is also in the record as part of your
14 affidavit, so it's already before the Court. But I was just
15 going to ask you to summarize as briefly as you can, the main
16 points of your reorganization plan.

17 A So the essential point was to find a scholar or a
18 group of scholars who were tenured professors who would help
19 re-establish the journal and transition to a new type of model
20 for editing it. My earlier model had been based on the idea
21 of helping graduate students to network and gain academic
22 experience in the field, and it had proven very successful in
23 helping scholars to get their names known, name recognition
24 with major scholars. But it seemed because of the oppressive
25 atmosphere that we were now in, which had really changed since

1 the founding of the journal back in 2005, that a new model was
2 needed.

3 And so I proposed some professors, full professors
4 at various institutions who had expressed interest in helping
5 to take over the journal and work with me and other members of
6 the already existing editorial board to ensure a smooth
7 transition to a new -- a slightly new model, I would say.

8 Q I'm glad you brought up the editorial board again.
9 Because besides you and Professor Slottow, you had many other
10 members of -- of the editorial board, correct?

11 A Right.

12 Q And what was their -- what were their obligations
13 to the journal?

14 A So they served as readers. Primarily we -- we
15 would send out articles that we received for consideration.

16 Q I see.

17 A And those members of the board were essentially
18 readers who would report back to the editorial staff and send
19 us reports, readers reports. And then we would discuss those
20 and see if we were willing to publish or not publish an
21 article.

22 And I might add that it took quite a long time to
23 assemble that editorial board. It -- it includes probably I
24 would say about 80 percent of the most distinguished scholars
25 in the field. And I thought that certainly for purposes of

1 continuity, we needed to keep that editorial board mainly in
2 tact.

3 Q And drawing your attention back to the document
4 you submitted to the University as a kind of reorganization
5 plan at least in the section with the heading Roman Numeral
6 II, under the second bullet point on the third page it says:
7 The JSS will restructure the editor-in-chief position and
8 editorial board.

9 And I -- I believe that was what you were talking
10 about earlier, correct?

11 A Correct.

12 Q And are these individuals; Hedi Segal, Eric Wen,
13 Professor Wayne Petty -- and I believe there's a Professor
14 Kerri Kotta.

15 A Yes.

16 Q And you list their institutions there. Were they
17 some of the individuals who had expressed interest in
18 supporting the journal?

19 A Absolutely. Yes.

20 Q And are any of those individuals to your knowledge
21 currently involved in the journal?

22 A No.

23 Q And there's also a conflict of interest statement.
24 Why was that included in your reorganization plan?

25 A There had been complaints that I had contributed

1 to the symposium, and there were other complaints that were
2 aired to the ad hoc committee that I had published -- in
3 previous volumes I had published an article, actually two
4 articles with another scholar, for my teacher Edward Lawford
5 who passed away a few years before that. And because I had
6 been one of his students, I -- I published in that as well.

7 Q Are you aware of any other journal published in
8 the area of music theory by the University of North Texas
9 press that has also published orders by its editor?

10 A Yes. Theoria.

11 Q What is Theoria?

12 A Theoria is a history of music theory journal
13 that's published by the same press.

14 Q Who's -- who's the editor?

15 A Professor Frank Heidlberger, my colleague.

16 Q And I believe he's a defendant in this case,
17 correct?

18 A Correct.

19 Q Do you know of any time in which he was criticized
20 for publishing in his own journal?

21 A No.

22 MR. ALLEN: And, Your Honor, we're happy to brief
23 that in addition, but I believe that we will move on to
24 other -- other issues.

25 BY MR. ALLEN:

1 Q And let's skip over the anonymity issue, but the
2 last section is "the journal reserves the right to engage in
3 free and open exchange."

4 Do you see that bullet point on page four?

5 A Yes.

6 Q What was the purpose of including that bullet
7 point in your proposal?

8 A We want the journal to be able to publish
9 different viewpoints rather than be just be a kind of mirror
10 of a light -- light-think type of environment, where everybody
11 has the same ideology and the same perspective. So that was
12 put in there because we wanted the possibility down the road
13 to have more symposia on controversial issues and allow
14 scholars to express themselves without fear of censorship.

15 Q And -- and are you aware of any other journals at
16 the University of North Texas that have published special
17 articles or symposia without peer review?

18 A Yes.

19 Q What journal would that be?

20 A Theoria.

21 Q Again, the journal edited by Frank Heidlberger?

22 A Correct.

23 Q All right. And has there ever been any fall out
24 or disciplinary investigation, any action against that
25 journal --

1 A No.

2 Q -- for -- for publishing un-peer reviewed
3 collections of articles?

4 A No.

5 Q So after you submitted this proposal, what
6 happened next?

7 A Well, there was some wondering and concern on the
8 part of various individuals, both inside the faculty at UNT
9 and especially outside, wondering what the future of the
10 journal would be, and whether it would continue to be
11 published at all. And I really couldn't answer the question
12 because I wasn't privy to any of the ongoing discussions.

13 But then an announcement was made first by the
14 division chair, Dr. Brand, and then confirmed by Dr. Bakulina,
15 another one of my colleagues, that a committee -- a search
16 committee would be formed with membership named by the Dean
17 that would search for a new editor who was supposedly to be
18 from outside UNT, also tenured at another institution who
19 would actually be paid some kind of fee or salary for taking
20 on this project of editing the journal. And that person then
21 once appointed by this committee, would completely reorganize
22 the editorial board. So there was no guarantee of any kind of
23 continuity in the editorial board.

24 Q And I'm going to put Exhibit 3 up on the screen.
25 We'll -- we'll come to talk about the search committee in a --

1 in a bit.

2 But I want to ask you if you recognize this
3 letter and I'll see if we get the first part of it.

4 A Yes.

5 Q And at the bottom here, do you recognize that
6 signature?

7 A I do.

8 Q Who -- who is that?

9 A Professor -- well, it's -- I don't know if she's a
10 professor, but it's the Provost.

11 Q Jennifer Cowley?

12 A Yes.

13 Q And do you recall getting this letter on March 2,
14 2021?

15 A I do.

16 Q What did Jennifer Cowley tell you in this letter,
17 Professor Jackson?

18 A Well, the gist of the letter was that the
19 University would set up a committee as I just explained, to
20 hire a new editor. And then as the letter states, this new
21 editor would decide who would be on the new editorial board.

22 Q And so what happened to the old editorial board at
23 this time?

24 A Well, that's a good question. The edit -- some of
25 the old editorial board members have written to me asking

1 what's happening, and I can't answer the question because I
2 don't know.

3 Q And do you see where it says the last two
4 sentences I believe of the first paragraph, Provost Cowley
5 says: I also note that you did not address the panel's fourth
6 recommendation, which concerns issues of governance and
7 oversight. Furthermore, you reserve the right for the journal
8 to publish contributions that are not peer reviewed.

9 Do you see where that --

10 A Yes, I see that.

11 Q And was it true that you did not address issues of
12 governance and oversight?

13 A I absolutely did. I said that -- that the journal
14 should continue under an editor and that that editor should be
15 assisted by a small editorial board and also have an editorial
16 board composed of outside readers. That -- that's exactly
17 what I said.

18 Q And did Provost Cowley ever address your concerns
19 for the academic freedom and independence of the journal?

20 A This is a crucial question, and the answer is
21 absolutely not.

22 Q I would just like to direct your attention to the
23 sentence that begins "This editor then will determine." It's
24 a -- it's right in the middle of the second paragraph. Do you
25 see that, where this begins?

1 A Yes.

2 Q And Provost Cowley says: This editor then will
3 determine the membership of the JSS editorial board,
4 recruiting new members as needed, and renewing existing
5 members as appropriate. In close collaboration with the
6 board, the new editor will establish clear and transparent
7 guidelines concerning the governing structure of the journal
8 and its editorial review and publication practices, and so
9 forth.

10 How did you understand this announcement that a
11 new editorial board would be appointed to an as yet unnamed
12 editor?

13 A I understood it as a removal of me from the
14 journal. I think that's a reasonable inference, I would
15 think.

16 MR. ALLEN: And, Your Honor, should I mark these
17 for the record? Do I need to ask that they be entered
18 into the record?

19 THE COURT: You can move when you're done, move
20 them all in.

21 MR. ALLEN: Okay.

22 BY MR. ALLEN:

23 Q Now I -- I wanted to return to something you had
24 raised before, Professor Jackson. You said that there was
25 a -- an effort to form some kind of committee to hire a new

1 editor?

2 A Correct.

3 Q Was that in response to Provost Cowley's
4 initiative?

5 A Yes.

6 Q The initiative she announced on March 3rd in that
7 letter?

8 A Right.

9 Q And I'm going to ask if you recognize this
10 document, Professor Jackson.

11 A I do.

12 MR. ALLEN: And, Your Honor, this is Exhibit 5,
13 premarked.

14 BY MR. ALLEN:

15 Q And what -- what is this document, Professor
16 Jackson?

17 A So this document is an advertisement for the
18 position of editor of the Journal of Schenkerian Studies,
19 which is now deemed to be vacant.

20 Q And if you turn to the second page, who were the
21 members of that committee?

22 A So if you move the screen down.

23 Q Oh, I'm sorry.

24 A The members of the committee are Dr. Ellen
25 Bakulina, Mr. Ron Chrisman, Dr. Graham Hunt, Dr. John

1 Ishiyama, and Dr. Jessica Napoles.

2 Q And who's the chair of the committee?

3 A Dr. -- Dr. Napoles.

4 Q And what relationship did she have to music theory
5 and Schenkerian Studies?

6 A None.

7 Q What's her position?

8 A Her area is choral music education.

9 Q And John Ishiyama -- just going from backwards to
10 forwards, John Ishiyama, he appears to be a distinguished
11 research professor as well?

12 A Yes.

13 Q What is his relationship to the college of music?

14 A Well, I -- I can only tell you that I don't know
15 of one.

16 Q Does he have any -- to your knowledge, does he
17 have any familiarity with Schenkerian analysis or even music
18 theory more generally?

19 A No.

20 Q Who on this list was even participating in the
21 editorial board before July, 2020?

22 A Dr. Bakulina and Dr. Hunt were both readers. They
23 were both on the board as possible -- possible readers of
24 manuscripts.

25 Q And I believe earlier you described yourself and

1 Professor Slottow as the -- for lack of a better term -- the
2 working members of the editorial board who oversaw
3 publications of the journal. Is that accurate?

4 A Yes, it is.

5 Q Were either of you included in this committee?

6 A No.

7 Q Were either of you consulted in this committee?

8 A I was not.

9 Q And of course Ron Chrisman is the director of the
10 UNT press, right?

11 A Right.

12 Q Does the UNT press specialize in music theory
13 publication?

14 A They've published a few music theory books
15 actually in the past, but I wouldn't say that they specialize
16 in music theory. No, it's a much broader -- their catalog is
17 much broader than just music theory.

18 Q So he's not a specialist in that area either?

19 A No, no, no.

20 Q All right. And turning to the first name on the
21 list, Ellen Bakulina. Has she made any pronouncements about
22 the Journal of Schenkerian Studies in the July 2020 timeframe?

23 A Yes, she did.

24 Q And what did she say about the journal at that
25 time?

1 A Well, she signed a manifesto or a document stating
2 that the journal should be dissolved, and -- or -- or
3 recommending the dissolution of the journal. Maybe I should
4 be even more precise. I should say that she signed an
5 endorsement of the statement saying that I should be removed
6 from my position and that the journal should be dissolved.

7 Q All right. And I -- I understand that peer review
8 was a major concern of -- at least of Provost Cowley that you
9 were able to discuss in that letter that we showed from
10 March 3, 2021. Are you aware if Ellen Bakulina had ever
11 published un-peer reviewed articles in a UNT journal?

12 A Yes, I am.

13 Q And what journal did she publish in?

14 A She published in Theoria.

15 Q And do you remember when that was?

16 A Yes. I believe it was in 2018 but I -- I'm not
17 sure. I think it was about that time, yes.

18 Q A list of Theoria's publications are available on
19 the website of UNT as part of their official announcements of
20 the University, correct?

21 A Correct.

22 MR. ALLEN: I'm going to put up, Your Honor,
23 Exhibit 8.

24 BY MR. ALLEN:

25 Q All right. And ask -- you -- you said she had

1 signed a manifesto, Ellen Bakulina. And I wanted to direct
2 your attention to this document, Professor Jackson. Do you
3 recognize this document?

4 A Yes, I do.

5 Q Is this that manifesto you were referring to?

6 A No, I don't -- well, wait a second. I -- there
7 are different versions of this manifesto, so -- or this
8 petition.

9 Q Uh-huh.

10 A So I'm not quite sure exactly which one of them it
11 is. But -- but definitely overlaps with the two -- at least
12 two different versions that we have.

13 Q And this is the fac -- a faculty version, correct?

14 A Yes. This is the faculty version. So there was
15 two student versions, and then one faculty version that
16 endorsed the student version.

17 Q Uh-huh.

18 A And this is the faculty version.

19 Q And I just wanted to direct the Court's attention
20 and your attention, Professor Jackson, to the very
21 top right -- excuse me, left hand corner, where it says the
22 date there, 10/27/2021 --

23 A Yes.

24 Q -- at 9:15 a.m. even. And this seems to be taken
25 from a -- a website?

1 A Yes.

2 Q Do you recognize that website?

3 A I do.

4 Q And what is it?

5 A It's the Society for Ethnomusicology.

6 Q Is that a professional society in the area of
7 Ethnomusicology?

8 A It is. And I also believe that this is still
9 posted.

10 Q In fact, at least as of 10/27/21, correct?

11 A Oh, yes. Right.

12 Q And look at the second paragraph please in that --
13 in that -- what they are calling here I believe a statement of
14 UNT faculty on the Journal -- on the Journal of Schenkerian
15 Studies. Do you see that second paragraph?

16 A Yes, I do.

17 Q Can you read it for the Court, please?

18 A Yes. We endorse the call for action outlined in
19 our student's letter -- and then there's a URL given -- which
20 asks that the college of music, quote, publicly condemn the
21 issue and release it freely online to the public. And, quote,
22 provide a full public account of the editorial and publication
23 process and its failures, end quote. Responsible parties must
24 be held appropriately accountable.

25 Q And who is the first name in the time list of

1 signatories?

2 MS. CORBELLO: Your Honor --

3 A Dr. Ellen Bakulina.

4 MS. CORBELLO: Your Honor, I would like to object.
5 At this point we're so far outside the scope of the
6 singular question the Court has called us here for,
7 whether he was banished from the journal or not.

8 MR. ALLEN: Your Honor, this is someone they
9 placed on the committee to decide the future of the
10 journal, which they are claiming did not remove my
11 client. And we have a -- one of the only people that was
12 ever involved in the journal previously, denouncing the
13 journal, denouncing the journal over and over again even
14 into the present day.

15 THE COURT: I'll give you some leeway. Go ahead.

16 BY MR. ALLEN:

17 Q By the way, Professor Jackson, we know that the ad
18 hoc panel report was published on the UNT website, and I
19 believe it's even still there. Did -- did UNT ever publish
20 your response and make it public?

21 A No.

22 Q How did your response become public with your
23 proposal for the reorganization of the journal?

24 A It became public when we filed the lawsuit against
25 UNT.

1 Q All right. And just to -- before I go on, what --
2 what is Professor Bakulina referring to there when she says
3 "outlined in our student's letter"?

4 A She's calling attention to probably the second
5 later version of the student petition. The first version was
6 probably toned down a little bit. The first version also
7 accused me not only of racism and other things, but also
8 extortion. But the second version was limited to -- to racism
9 and other -- other --

10 Q How did you first learn about the student
11 petition, its specific demands, its specific content?

12 A It was sent to me by the head of the student
13 association at UNT.

14 MR. ALLEN: And I'm going to put before the Court
15 Exhibit 6, Your Honor.

16 BY MR. ALLEN:

17 Q And ask -- Professor Jackson, do you recognize
18 this document?

19 A I do.

20 Q What is this document?

21 A This document is a copy of the email that was sent
22 to me on July 29th at 3:17 p.m --

23 Q And --

24 A -- from -- from Mr. Peter Kohanski, who was at
25 that time the president of the Graduate Association of

1 Musicology and Theory Students at UNT.

2 Q And is that an official association of the
3 University?

4 A It is.

5 Q I would just like to draw your attention to some
6 of the contents of this document. If you could look to the
7 bottom of page two. Let's see, I've got to keep on my game
8 here.

9 What does it call for?

10 A It calls for UNT to dissolve the Journal of
11 Schenkerian Studies.

12 Q So at least one member of the committee charged
13 with finding a new editor for the journal has publicly called
14 for it to be dissolved?

15 A That is correct.

16 Q And I believe there are other calls in there --
17 for instance, if we just skip down to number three, what's the
18 last demand -- excuse me, to number four. What's the last
19 demand in number four?

20 A Hold accountable every person responsible for the
21 direction of the publication. This should extend -- this
22 should also extend to investigating past bigoted behaviors by
23 faculty. And by taking this into account, the discipline and
24 potential removal of faculty who used the JSS to platform --
25 sorry -- who used the JSS platform to promote racism.

1 Q And then as if to make sure there's no ambiguity,
2 do you see the bold?

3 A Uh-huh.

4 Q What does that say?

5 A It says, calling for Dr. Jackson's dismissal.

6 Q And that's you, correct?

7 A Correct.

8 Q All right.

9 MR. ALLEN: I will also turn to Exhibit 7, Your
10 Honor.

11 BY MR. ALLEN:

12 Q And I believe, Professor Jackson, you said there
13 were at least two known versions of the student letter that
14 you knew of, correct?

15 A Correct.

16 Q And do you recall --

17 MR. ALLEN: And it's already in the court record I
18 believe, Your Honor, as one of the exhibits in Professor
19 Jackson's extensive affidavit. But there's one appended
20 to the ad hoc panel report as well, and I believe we will
21 talk briefly about that.

22 BY MR. ALLEN:

23 Q Do you recognize this document, Professor Jackson,
24 that I've marked as Exhibit 7?

25 A Yes.

1 Q And what is this?

2 A This is one of the versions of the student
3 petition that was endorsed by the faculty.

4 Q And does it condemn anyone in particular?

5 A Yes. Me, and also Dr. Slottow.

6 Q The two working faculty who were involved in the
7 journal, correct?

8 A Correct.

9 Q And again, Ellen Bakulina signed on to this?

10 A Correct.

11 Q And do you see in number one there --

12 A Uh-huh.

13 Q -- the first numbered section right after, it says
14 "to this end" right here?

15 A Yes.

16 Q And do you see where it says: We believe that all
17 contributors should be held fully accountable for their
18 comments?

19 A We did. I do see that, yes.

20 Q Did that include you?

21 A Yes.

22 Q And again then, if you skip down to page -- I'm
23 sorry, skip to the bottom of that page under number one. The
24 second number one on that page, what does it call for?

25 A It calls for the University of North Texas and the

1 college of music to dissolve the Journal of Schenkerian
2 Studies.

3 Q And it even says at the end, "there is no reason
4 for it to exist."

5 Did I read that correctly?

6 A Yes.

7 Q And then if you skip to number three, if you can
8 just read that for the Court.

9 A Hold every -- sorry. "Hold accountable every
10 person responsible for the direction of the publication."

11 Q And again, that would be you, correct?

12 A Yes.

13 Q And so again, it appears Ellen Bakulina at -- at
14 least endorsed one or the other of these student letters?

15 A Yes, she did.

16 Q And did she ever say anything else publicly about
17 the journal prior to being put on this committee?

18 A Yes. She -- she sent around the ad, so -- for the
19 new editorship. So it came up -- it was brought up in the
20 faculty meeting at which she and I were present, and every --
21 I believe most of the faculty. And the -- the -- the
22 advertisement had been sent out on the Society of Music Theory
23 list.

24 May I add one other point? And that is that
25 everybody in this Society of Music Theory knew that I had

1 started this journal and that I had overseen it for
2 approximately 15, 16 years.

3 Q Uh-huh.

4 A And that there was great concern in certain
5 quarters about the condemnation, or the effect that it's now
6 called cancellation of both me and the journal. And so that
7 this was a way of signaling that I was no longer involved with
8 the journal, that the journal had essentially been subjected
9 to a hostile takeover. And it was also a way of essentially
10 publicly shaming me in front of -- in front of the
11 professional society.

12 Q And do you recognize this document, Professor
13 Jackson?

14 A I do.

15 Q What is this document?

16 A This was a letter that was -- an open letter that
17 was circulated by the SMT, Society of Music Theory, in
18 response to the publication of the symposium in the journal's
19 last issue.

20 Q And it also says here, right: The journal's
21 violation of academic standards of peer review, its singling
22 out of Professor Ewell while denying him a chance to respond,
23 and the language of many of its essays constitute anti-Black
24 racism.

25 Did I read that correctly?

1 A You did.

2 Q And of course, you testified earlier that
3 Professor Ellen Bakulina had also published articles without
4 peer review in another UNT journal, correct?

5 A Correct.

6 Q And without getting in too far afield, is it true
7 that the journal under your tutelage had denied Professor
8 Ewell a chance to respond?

9 A Nobody was denied a chance to respond. And in
10 fact, all the pro Ewell statements that we received were
11 published and no change was made to their editorial position.
12 In other words, there was no censorship of pro Ewell responses
13 either.

14 Q And could I draw your attention to number four on
15 that list of -- it's on the second page, I believe.

16 Could you explain that to the Court, please --

17 A Number four says that any member of the Society of
18 Music Theory who is on the editorial board should resign.

19 Q And would that include you?

20 A Yes.

21 Q And last, if you look at number six, can you
22 explain that bullet point to the Court, please?

23 A So what this is saying, is that they believe that
24 the advisory board of the journal has violated their mission
25 statement on ethics, and policy, and harassment. That seems

1 to be what they are talking about. But you'll notice here
2 that the policy states that "cases of proven offenses" will
3 result in "revocation of membership and honors."

4 But I fail to see where any case of such offenses
5 was proven in this case.

6 Q And I just want to direct your attention to -- I
7 believe it's the fourth page.

8 A Yes.

9 Q Has Ellen Bakulina signed this petition as well?

10 A She did.

11 Q In fact, she seems to have signed it twice?

12 A That is true.

13 Q Thank you.

14 Has anyone from the current committee charged
15 with hiring a new editor contacted you for your input?

16 A No.

17 Q So just to -- to transition to where the journal
18 is now, Professor Jackson, I believe you testified earlier
19 what the journal would be doing now if you had remained in
20 control of the journal. And could you just restate briefly
21 where the journal would be now but for the incidents of July
22 2020?

23 A Probably the next issue would already be
24 published. We had at least three -- I think three articles
25 ready to go that had gone through the peer review process.

1 And then we had at least two or three already, articles and
2 remanences concerning Professor Rothgade. I would not
3 contribute to this issue. In fact, we had a guest -- we had
4 invited two guest editors for the next issue. One was Hedi
5 Siegel and the other was Wayne Petty, actually. Because both
6 of them had worked closely with Professor Rothgade and they
7 had solicited contributions from major scholars, students,
8 former students, and associates of Professor Rothgade to write
9 either scholarly articles in his honor, or contribute
10 recommend remanences of him.

11 Q And to your knowledge, has the University of North
12 Texas appointed a new editor to replace those individuals, or
13 to replace anyone at the journal?

14 A No, I don't know. I have no knowledge of that.

15 Q Is that the kind of information that you would
16 learn about as a -- as a full faculty member of the UNT
17 College of Music if it had happened?

18 A Well, it depends. I mean if the -- if the -- if
19 the journal was functioning and I was still involved with it,
20 I would certainly know.

21 One thing that -- that also strikes me as strange,
22 is that Professor Slottow and I have been working in this
23 field for many, many years. I would -- started working in
24 this field when I was 21, and I'm now 63, so that's 42 years.
25 And when I gave a talk at the -- my last talk at the SNT

1 meeting -- national meeting, I was introduced as a scholar who
2 needed no introduction in the field. So I find it kind of
3 surprising that I don't know anything. But that's the truth.
4 I -- I have no knowledge of what's happening with the journal.

5 Q All right. And do you believe the SNT would now
6 tolerate your presence on the journal?

7 A I don't know.

8 MS. CORBELLO: Objection. Speculation.

9 THE COURT: Well, overruled.

10 BY MR. ALLEN:

11 Q Have you in your experience -- what appears to be
12 20 years as a faculty member at UNT -- did I get that correct?

13 THE COURT: Let me just ask the question of UNT.
14 We're going around this a little way. I mean, is he
15 welcome back? Can he run the journal? Can he go back
16 and just keep running the journal as it is, or are you
17 preventing him from doing that? If he's allowed to go
18 back and do the journal, then maybe that ends this. But
19 if he's somehow restricted -- I mean if he has the free
20 ability to go back and take control and do whatever he
21 was doing with the journal before, can he do that?

22 MS. CORBELLO: Your Honor, two things. We have
23 Dean Richmond here to testify as to the current state of
24 where the journal is at in the applications. There is no
25 restriction on Professor Jackson going back to the

1 journal. The journal doesn't exist right now. As he
2 testified, it's on ice. There's no editorial board to go
3 back to, there's no journal to write on. They're still
4 searching for a new editor, and as the letter that
5 counsel showed states, the editor is the one picking the
6 new editorial board. So therefore, no editorial board
7 exists.

8 THE COURT: So the answer though is -- you say he
9 can go back, but he can't because the University has put
10 an ice on the journal.

11 MS. CORBELLO: There's nothing to go back to, Your
12 Honor. The ad hoc committee issued recommendations,
13 Professor Jackson agreed with those recommendations, and
14 those recommendations are now being put into place which
15 means the journal doesn't go forward until the
16 recommendations are complete.

17 MR. ALLEN: Your Honor, I would submit that this
18 is an admission that they've killed the journal. I mean
19 sure, they want to revive it in some ideologically more
20 pure form that conforms to their ideology, but she said
21 herself that the journal exists no more.

22 MS. CORBELLO: Your Honor, it is not a claim of an
23 injury that a university decided to restructure the
24 editorial-ship of its journal. The journal might exist
25 in the future, but the fact that it doesn't now, means

1 the Court has nothing -- no ability to address the
2 injury. There is no one to appoint Mr. Jackson back to a
3 journal that is on ice, that is not issuing any sort of
4 journals or volumes.

5 MR. ALLEN: Well, I would suggest that Your Honor
6 turn the Court's attention to the letter of Provost
7 Cowley. There was a rejection of Timothy Jackson's
8 proposals to safeguard the academic freedom of the
9 journal, and then they turned the journal over into the
10 hands of people who were sworn foes of the tradition that
11 had been carried on by Timothy Jackson. So I -- I don't
12 really understand the point of this argument.

13 THE COURT: Let me ask this of the University.
14 His role has changed has it not? I mean you say it's the
15 same, but he was on the editorial board before. He
16 wasn't the editor or the --

17 MS. CORBELLO: He was never the editor, Your
18 Honor.

19 THE COURT: He was on the editorial board,
20 correct?

21 MS. CORBELLO: Yes, when it existed.

22 THE COURT: Okay. So tell me why is it not in
23 existence now? What has happened?

24 MS. CORBELLO: Because based on the last volume of
25 the journal that was issued, an ad hoc committee that was

1 created -- as counsel has been talking about, since then
2 the recommendations that came out, and then the Provost
3 required those recommendations to come out from the
4 committee. And Mr. Jackson was asked to be a part of
5 that recommendation creation and proposals. That's what
6 happened. And now the University is looking for an
7 editor. Since the applications have been open in March I
8 believe of this year -- or later in the spring of this
9 year, University hasn't received any applications for
10 editor. And so without the editor, there can't be any
11 appointment of anyone on the editorial board, Professor
12 Jackson or otherwise. I would also point out that
13 Professor Jackson has not applied for that editor
14 position.

15 MR. ALLEN: Well, Your Honor, this is almost like
16 saying if we cut off his hands so he can't write but he
17 doesn't bleed to death, then he hasn't really been
18 harmed. But he cannot do anything with the journal. As
19 they said, they designed the structure of the search to
20 almost ensure that they get no applications. Anyone
21 serious about Schenkerian studies -- as Professor Jackson
22 could tell the Court -- is not going to apply to this
23 position in the current climate of ideological
24 suppression of viewpoints.

25 THE COURT: So let me ask you, sir, how would the

1 Court redress this -- I mean what relief would you seek
2 from the Court to address this?

3 MR. ALLEN: I believe the Court could be asked,
4 and has the authority to order the state institution to
5 restore the journal to its former form, and to restore
6 Professor Jackson to his former role in organizing,
7 shepherding this journal, and also in this case
8 safeguarding it from the kind of ideological motivated
9 attacks that have resulted in the assault on academic
10 freedom at the University of North Texas. This journal
11 has been killed. The Court can order it to come back to
12 life.

13 MS. CORBELLO: Your Honor, two things. The Court
14 cannot force the University under allowable remedies
15 under 42, U.S.C. 1983 to create a journal that currently
16 does not exist and then require it to offer Professor
17 Jackson a spot on the editorial board. That is not
18 injunctive relief that is permitted by the Fifth Circuit
19 or the Supreme Court in this area of law.

20 THE COURT: Well, you agree since whatever steps
21 the University has taken, the journal is defunct or on
22 ice? So I guess --

23 MS. CORBELLO: I apologize. I didn't hear that
24 second part.

25 THE COURT: I guess my question is you're still --

1 since you said the journal is not -- no longer really in
2 existence, how is he still on the editorial board? He
3 was on the editorial board, that's a change if he's no
4 longer on the editorial board. So that's a move the
5 University did take against him.

6 MS. CORBELLO: Your Honor, under the claim that
7 Professor Jackson has brought, he has to show that the --
8 that the editorial board being dissolved was a result of
9 him exercising a First Amendment right. Here the
10 timeline is the ad hoc committee issued recommendations,
11 Professor Jackson agrees with those recommendations and
12 proposes his own. Either there's some disagreement as to
13 who agrees with what recommendations, whether Professor
14 Jackson agrees with them all or wants something more.

15 In January of 2021, a month later, he writes an
16 affidavit to this Court stating "I am on the editorial
17 board." Any injury thereafter where the editorial board
18 was dissolved because a new restructuring took place and
19 the University is now looking for an editor, is not
20 related to his exercising a First Amendment right eight
21 months earlier and the pursuing recommendations that
22 happened two months earlier.

23 THE COURT: And let me just ask, did the
24 University ever threaten to remove him from the editorial
25 board?

1 MS. CORBELLO: No, Your Honor.

2 MR. ALLEN: Your Honor, please. The idea that
3 Professor Jackson somehow agreed with the ad hoc panel
4 that accused him of being some kind of gangster who
5 forces graduate students into cars and things of this
6 nature is simply -- I don't believe it's being advanced
7 in -- I understand the State of Texas has a very
8 honorable core of attorneys, but I just simply do not
9 believe that can be advanced in good faith.

10 The -- the second part, Your Honor, he proposed
11 things that they rejected. He put -- as opposed to that
12 affidavit when he said I'm on the editorial board, he was
13 on an editorial board that he was no longer being
14 informed of had been killed, had been simply squeezed out
15 of existence by this new initiative that they had also
16 shoved him to the side. He had support from graduate
17 students, TAs, he was allowed course reductions because
18 of his work on this journal which he is no longer
19 entitled to. I think it's probably ordinary in -- in
20 most areas where someone quits their job, that they don't
21 take their funding with them. That was not the case
22 here.

23 THE COURT: Go ahead. I didn't mean to cut you
24 off. If you have additional evidence, go ahead and
25 present it.

1 MR. ALLEN: All right. We were just wrapping up,
2 Your Honor.

3 BY MR. ALLEN:

4 Q And I was going to bring up this point, Timothy --
5 or excuse me -- Professor Jackson, throughout your tenure
6 shepherding the journal through these many years of
7 publication, what other benefits did you receive from the
8 University of North Texas attendant to that service to the
9 University?

10 A I received one course remission for most of my
11 tenure as the adviser and as the director of the Center for
12 Schenkerian Studies, and I no longer receive any kind of
13 compensation, and have not since -- since the attack on the
14 journal.

15 Q And how about administrative duties in the
16 University -- in the department of -- or excuse me, the school
17 of music?

18 A Well, basically for the first time in my 20 years
19 at the school I've been removed from all faculty committees
20 within the college of music. This is now the second year of
21 which I have been removed from all participation in faculty
22 governments at the college of music.

23 Q So for lack of a better term, is it safe to say
24 they won't let you play in any reindeer games?

25 A Absolutely.

1 MR. ALLEN: Your Honor, I think we've put on the
2 evidence. I think the State has admitted that the
3 University has killed the journal. I -- I don't know
4 what other arguments that we could make, so we will rest.

5 THE COURT: Let me see if she has any questions.
6 Do you have any questions?

7 MS. CORBELLO: Yes, Your Honor. We do.

8 THE COURT: Go ahead.

9 CROSS-EXAMINATION

10 BY MS. CORBELLO:

11 Q Professor Jackson, just to clarify, you were never
12 editor of the journal, correct?

13 A Correct. I was the adviser.

14 Q And you are still currently the director of the
15 Center for Schenkerian Studies, correct?

16 A Yes.

17 Q You have not been removed from that position?

18 A Correct.

19 Q Do you remember the document your counsel showed
20 you just a little while ago? The letter you wrote?

21 A Yes.

22 Q Did you write this sentence: It is now absolutely
23 necessary that the editor-in-chief be a full-time tenured
24 faculty member, whether at UNT or at an outside institution?

25 A I did.

1 Q Did you also write this sentence a few paragraphs
2 below: I have already extended an invitation to a potential
3 editor-in-chief at another university?

4 A I did.

5 Q So at least in this letter it appears that you
6 were on board with having a new editor take the spot at the
7 journal -- at the JSS, right?

8 A Correct. That was in my letter of recommendations
9 to Provost Cowley in response to the ad hoc committee.

10 Q Yes. Thank you, Professor Jackson.

11 I'm showing you what has been marked and
12 submitted to the Court as Defense Exhibit 1. It's an
13 affidavit by Dr. Benjamin Brand. I'm showing you here
14 paragraph four.

15 Dr. Brand states under penalty of perjury: I
16 have not removed Dr. Jackson as editor of the Journal of
17 Schenkerian Studies, nor have I removed him as a member of
18 the journal's advisory or editorial boards.

19 Do you see that?

20 A I do.

21 Q Do you believe Dr. Brand is not telling the truth
22 in this statement?

23 A I do.

24 MR. ALLEN: And I'm going to object, Your Honor,
25 because Dr. Brand is not here to submit to

1 cross-examination.

2 MS. CORBELLO: I'm sorry, I didn't hear the
3 objection.

4 THE COURT: He's objecting to you using an
5 affidavit at the hearing.

6 MS. CORBELLO: Your Honor, the affidavit was
7 issued under penalty of perjury, it's admissible under
8 the federal rules of evidence, it's valid evidence for a
9 12(b)(1) motion, and counsel has been permitted to obtain
10 and present multiple hearsay statements for people that
11 have not been brought to testify as well.

12 MR. ALLEN: I would say, Your Honor, there have
13 been many hearsay statements, but they are admissions of
14 the University. They are actually not hearsay, they are
15 statements by the University by its agents, by it's
16 institutional website and things of that nature.

17 THE COURT: Well, normally in an evidentiary
18 hearing you wouldn't be bringing in an affidavit unless
19 the other side didn't object to it. I mean it's still --
20 it's hearsay, is it not, to offer an affidavit at an
21 evidentiary hearing?

22 MS. CORBELLO: Your Honor, my understanding was
23 this was a supplement to the 12(b)(1), which affidavits
24 are perfectly acceptable evidence in support of or in
25 argument for lack thereof.

1 THE COURT: I understand you're trying to school
2 me on the procedures that are appropriate, but we're
3 not -- this is not a 12(b)(1) motion. It is in terms of
4 what you submitted to the Court. I didn't ask for
5 supplemental briefing or supplemental affidavits, this is
6 an evidentiary hearing.

7 MS. CORBELLO: If the Court refuses to take
8 consideration of the affidavits, defense will simply
9 object to that. However, these affidavits were written
10 under penalty of perjury, they were the people who were
11 --

12 THE COURT: Let me ask you this.

13 MS. CORBELLO: -- submitting these affidavits on
14 behalf of --

15 THE COURT: When I'm talking, you stop. Okay?

16 MS. CORBELLO: Yes, Your Honor.

17 THE COURT: So if all affidavits are hearsay at a
18 hearing, I mean could you offer an affidavit at trial as
19 evidence?

20 MS. CORBELLO: No, Your Honor.

21 THE COURT: Well, why would this be any different?
22 This is an evidentiary hearing.

23 MS. CORBELLO: I understand the Court's position.
24 And again, if the Court would like to refuse to admit the
25 exhibits the defense has provided, we would also object

1 to the use of Plaintiff's exhibits that are not written
2 under penalty of perjury and are not submitted by all
3 members of the state.

4 THE COURT: Okay. Well, this is not tit-for-tat
5 here, but I mean, he utilized those without any
6 objection. He objected when you used this one.

7 MS. CORBELLO: Yes, Your Honor, because it was our
8 understanding that on a jurisdictional question the Court
9 is permitted to review evidence such as affidavits issued
10 under penalty of perjury.

11 THE COURT: Okay. I totally understand that in
12 terms of the briefing and affidavits that are submitted
13 as part of the briefing. I'm just dealing with the fact
14 that we're at an evidentiary hearing, which is unusual to
15 have an evidentiary hearing but that's what we're having
16 here.

17 MS. CORBELLO: I'm happy to ask for leave to
18 supplement the MTD, Your Honor, if that would be better
19 procedurally.

20 THE COURT: Well, I'll let you submit it. I don't
21 know if I'm going to allow it in or not, but I'll submit
22 it for purposes of the hearing for now.

23 MS. CORBELLO: I have one more.

24 BY MS. CORBELLO:

25 Q All right. Defense Exhibit 2, do you know a

1 Jamaica Chapple, Mr. Jackson?

2 A No.

3 Q I'll represent to you that she is currently the
4 acting secretary for the UNT Assistant Board of Regents. Do
5 you see that there?

6 A I do.

7 Q Do you see that Ms. Chapple stated: I reviewed
8 the minutes and official actions of the board from June 2020
9 to the present. There is no record of the board directing or
10 recommending that any administrator, official, or employee of
11 the University of North Texas took any adverse action against
12 Dr. Timothy Jackson, including removing him from any editorial
13 position or responsibilities associated with the journal.

14 MR. ALLEN: I'm going to renew my objection to any
15 statements coming in, not subject to cross-examination.

16 THE COURT: I understand. I'll give you a running
17 objection. I'm receiving them, I didn't say I'm
18 accepting it.

19 MR. ALLEN: For the purposes of the record, Your
20 Honor.

21 THE COURT: I understand.

22 MR. ALLEN: And also, there's been no discovery on
23 this. We think Professor Cowley's submissions --
24 certainly she didn't look at those. But maybe she's
25 arguing that the board -- the members we've named somehow

1 aren't proper defendants. I'm not sure where she's going
2 with this, but thank you.

3 THE COURT: Go ahead.

4 BY MS. CORBELLO:

5 Q Professor Jackson, you're asking the Court to
6 reinstate the journal, correct?

7 A That's a hypothetical question I would say because
8 it depends under what conditions the journal is going to be
9 reinstated. If it's going to be just a mouthpiece for one
10 side of the equation, then no, I'm not asking for that. I'm
11 asking for the journal to be a free academic journal which
12 promotes academic integrity and allows for freedom of speech
13 and for freedom of opinion. That's why my grandmother came
14 here in 1924 at the age of 21. She wanted to be free, and I
15 would like the same privilege.

16 Q Professor Jackson, I'll ask the question one more
17 time. Are you asking the Court to reinstate the Journal of
18 Schenkerian Studies?

19 A As I said, I'm not asking for it under
20 circumstances which I can't accept.

21 Q Are you asking under any circumstances?

22 A I don't know what that question means.

23 Q Well, you just said you're not asking for it under
24 certain circumstances. Are there any circumstances that you
25 would ask that of the Court?

1 A Yes, there are.

2 Q Are you asking the Court to reinstate you to the
3 editorial board after reinstating the journal?

4 A Yes.

5 MS. CORBELLO: Nothing further, Your Honor.

6 THE COURT: Anything else of this witness?

7 MR. ALLEN: Just a very brief question, Your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MR. ALLEN:

11 Q Two questions, Professor Jackson, and bringing
12 this hearing to an end as I hope.

13 Why will none of the editors that you reached out
14 to personally join the journal in its current form, in its
15 current incarnation of this search committee headed by people
16 like Ellen Bakulina who have called for the destruction of
17 the journal?

18 A Well, to be accurate, I haven't spoken to people
19 about this question and I didn't know that nobody had applied
20 for the job. But if I'm -- if that is indeed the case, I
21 would say that everybody in the field of Schenkerian theory
22 who is a very serious person and a very serious scholar would
23 be very leary of taking on the journal without some kind of
24 guarantee of academic freedom and integrity.

25 Q And it was precisely that guarantee of academic

1 freedom and integrity that Provost Cowley rejected in her
2 letter to you, correct?

3 A Correct.

4 Q Opposing counsel has asked you if you would like
5 to be reinstated to the editorial board. Could you explain
6 the kind of position within the editorial board that you are
7 asking to be reinstated to since you've already described the
8 editorial board had different functions, sort of different
9 positions within the editorial board?

10 A Well, it would depend also if we were to continue
11 the journal at UNT. Because as I had originally conceived it,
12 it was an organ that was designed to promote UNT and promote
13 UNT students and -- and give them a head up or a leg up on
14 their careers.

15 But if the -- it sounds like given the current
16 climate that that might not be possible, so I would have to
17 give that more thought. But essentially I would like to
18 continue in an advisory role, as I have over the past years.
19 I think that the journal was exceptionally successful.
20 Articles appeared in bibliographies by speakers at major
21 conferences all over the world. UNT was known as a center for
22 serious Schenkerian Studies, it was known as a repository for
23 original Schenker documents, documents that were preserved
24 miraculously in spite of the Holocaust and brought to America.
25 Through my own efforts, by the way, in the year 2000, the

1 collection was brought here to the United States after being
2 hidden in Germany, and then subsequently other collections
3 have arrived.

4 And I would also add in all honestly, that part of
5 the reason for this is the prestige of the people at the
6 college of music who were teaching Schenkerian analysis. For
7 many years it was me and Dr. Slottow and we wanted to hire
8 some younger people who could continue the tradition.

9 Q And the position you're describing is a leadership
10 position, correct?

11 A It is, yes.

12 Q Not -- not just a reader position.

13 A No, exactly. It was -- it was a shepherding
14 position, a leadership shepherding position.

15 Q And by that, you mean you would have some modicum
16 of control over the journal, correct?

17 A Within reason, yes. It was always within reason.
18 There were always dissenting viewpoints. We always amicably
19 resolved disagreements among the two faculty advisers and the
20 students who were involved in editing the journal over the
21 past 20 years -- or 15 years, I mean. There were no
22 situations where there were serious disagreements.

23 And contrary to statements that were promulgated
24 in the -- in the petitions claiming that the students had no
25 power, as I said before they -- the editors -- the student

1 editors actually were taken very seriously and often made
2 decisions on their own about which articles to accept or
3 reject. We did not intervene in that process except when we
4 were asked to consider a problematic situation where we had a
5 disagreement between the readers. But otherwise, actually the
6 students who served in that position made decisions about
7 whether to accept or reject articles.

8 Q And would you describe your relationship to them
9 as a mentor?

10 A Exactly. Both Slottow and -- and the reason that
11 it worked out well, was that there were two of us. So
12 sometimes we didn't agree, and the two faculty advisers didn't
13 necessarily agree, or sometimes the student and one of the
14 faculty advisers didn't agree and we -- we would discuss
15 amicably how to find a resolution to the problem. But I think
16 that the resulting product on the whole was -- was really
17 quite excellent and was seen as such in the academic world.

18 Q And my last question before the Court, would be
19 what -- what has been the effect of UNT's approach to the
20 journal after the July 2020 incident on that mentoring
21 building relationship?

22 A Well, it's been devastating. It's been
23 devastating to the students. Some of the students who were
24 involved abandoned me as a faculty adviser because they felt
25 that I was tainted. Some cried. One -- one student called me

1 and spoke to me for I would say about three hours. And that
2 student was weeping continuously throughout the conversation
3 and saying that the person said that they could not --

4 MS. CORBELLO: Objection. Hearsay.

5 THE COURT: Sustained.

6 A Okay. Well, anyway, that -- it's been
7 devastating, let's put it that way.

8 MR. ALLEN: Thank you, Your Honor.

9 THE COURT: Any additional questions?

10 MS. CORBELLO: No, Your Honor.

11 THE COURT: Okay. You may step down.

12 Do you have -- that was all the evidence from the
13 Plaintiff, correct?

14 MR. ALLEN: I have no further evidence, Your
15 Honor, unless in rebuttal if something comes up.

16 THE COURT: And did you have some evidence you
17 want to offer, or any witnesses?

18 MS. CORBELLO: Yes, Your Honor. We have Dean
19 Richmond to offer as a witness.

20 THE COURT: Okay. Thank you.

21 Sir, if you'll raise your right hand and be sworn
22 in.

23 THE CLERK: You do solemnly swear the testimony
24 you shall give in the case now on hearing shall be truth,
25 the whole truth, and nothing but the truth so help you

1 God.

2 THE WITNESS: I do.

3 THE COURT: Have a seat -- and let him wipe it
4 down first.

5 (Brief pause)

6 THE COURT: Go ahead and proceed.

7 JOHN RICHMOND,

8 after having been sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. CORBELLO:

11 Q Can you give your full name for the record,
12 please.

13 A John William Richmond.

14 Q What's your current position, Dean Richmond?

15 A Professor and Dean of the College of Music.

16 Q And during the events giving rise to this suit in
17 2020, what was your position at UNT at that point?

18 A Professor and Dean of the College of Music.

19 Q Are you familiar with the -- the events giving
20 rise to this suit, Dean?

21 A I am.

22 Q Are you familiar with the JSS as we're calling it?

23 A Yes.

24 Q Can you explain to the Court why the ad hoc
25 committee was convened in this case after the publication of

1 the volume at issue here?

2 A Yes. Because the -- the incident as it's been
3 referred to, recommended -- given it's national attention and
4 controversy and examination, the ad hoc committee was convened
5 in order to provide some measure of objectivity from
6 experienced journal editors across the institution outside the
7 college of music.

8 Q Was the point of the ad hoc committee to figure
9 out who was in the wrong on the editorial board?

10 A I think the purpose of the ad hoc committee was to
11 determine what happened, and to understand the extent to which
12 best practices were observed, and opportunity for improvement.

13 Q Was the point of the ad hoc committee to have the
14 journal dissolved?

15 A No.

16 Q Who required the creation of the ad hoc committee?

17 A Provo.

18 Q Anyone else?

19 A It was the Provost.

20 Q And did the Provost -- you saw counsel kind of
21 talking about the members of the committee being outside of
22 UNT or outside of the Center for Schenkerian Studies. Was
23 that the Provost's decision making, do you know?

24 A It was the Provost's decision to make it -- to
25 constitute the committee as she did, to recruit experienced

1 journal editors from disciplines outside music in order to
2 ensure some measure of objectivity given the controversy
3 swirling in the music community as a consequence of the
4 publication of Volume 12 of the JSS.

5 Q One of the recommendations of the ad hoc committee
6 was they recommended an outside editor be placed at the JSS,
7 right?

8 A They did.

9 Q Okay. Is that application process ongoing?

10 A It is.

11 Q And when did it first -- when did the application
12 process open?

13 A I'm not certain of that. I remember it as being
14 late spring of 2021.

15 Q And it's still open to this day?

16 A It was open through the summer, and we received no
17 applications. And so it was extended through November 19th.
18 It is open as we speak.

19 Q And based on the restructuring recommended by the
20 ad hoc committee, who is now responsible for creating the
21 editorial board for the JSS?

22 A The editor, once -- once an editor is identified
23 and recruited, that editor will -- well, I can't quote, but to
24 paraphrase the provost's charge, recruit new members and
25 affirm the membership of current members if appropriate. So

1 it would be a mix of -- presumably, a mix of new and returning
2 board members.

3 Q Are you aware of the Board of Regents' members
4 that are sued as defendants in this lawsuit?

5 A Am I aware that they are sued?

6 Q Yes.

7 A Yes, I am aware.

8 Q Do you know if any of them will become the new
9 editor-in-chief of the JSS?

10 A I do not, no.

11 Q Do you know if any of them has applied for
12 editor -- for the editor spot at JSS?

13 A The regents?

14 Q Yes.

15 A No. No none. No.

16 Q So as we sit here today, is the JSS dissolved?

17 A No.

18 Q What is it?

19 A It is on pause while we seek a new editor and a
20 reconstituting. In other words, while we comport with the --
21 to the charge of the Provost for the reconstituting of the
22 journal, in order to ensure its viability moving forward.

23 Q Did you hear Professor Jackson testify earlier, he
24 called it the journal is on ice?

25 A I did hear him say that, yes.

1 Q Would you agree with that?

2 A I don't know that I would use that metaphor. I
3 would say it's on pause.

4 Q Is there a board of editors for the JSS currently
5 in existence?

6 A Yes, in -- insofar as there -- there has been no
7 action taken about board membership at all. That board
8 presumably is still that board.

9 Q But the journal is on pause, right?

10 A It is on pause seeking an editor, yes.

11 Q And the functions of an editorial board are to
12 review and essentially compile articles for the journal,
13 right?

14 MR. ALLEN: I'm going to object. She's leading
15 this witness. He's a direct witness, not a cross.

16 THE COURT: Rephrase the question.

17 MS. CORBELLO: I'm sorry, Your Honor. More so as
18 just a time saving mechanism.

19 BY MS. CORBELLO:

20 Q But what are the functions of the editorial board,
21 Dean?

22 A To receive, review, and recommend for publication
23 or not, submissions to the journal.

24 Q Fair to say if the journal is on pause, what does
25 that mean for the editorial board members at this point? Are

1 they working or not?

2 A No, they are not. Presumably not.

3 Q Has the editorial board dissolved?

4 A No.

5 Q Are you aware of any Board of Regents meeting
6 where it was decided that the editorial board of JSS would be
7 dissolved?

8 A No.

9 Q Are you aware of any way in which Professor
10 Jackson has been disciplined by UNT since the events giving
11 rise to this issue?

12 A No.

13 Q Do you know of any way in which Professor Jackson
14 has been reprimanded because of the events giving rise to this
15 case?

16 A By the University?

17 Q Yes.

18 A No.

19 Q Are you aware of any termination of Professor
20 Jackson from UNT?

21 A No.

22 Q Have you -- has anyone at UNT removed him as
23 director of the Center for Schenkerian Studies?

24 A No.

25 Q Has anyone from the University as far as you know

1 told him that he is no longer a part of the Journal of
2 Schenkerian Studies?

3 A No.

4 Q Has anyone at UNT taken action to close the Center
5 for Schenkerian Studies?

6 A No, just the opposite, actually. The Center is up
7 for its usual periodic review and the University has been very
8 patient in light of Dr. Jackson's request to provide
9 extensions for the submission of material in support of that
10 renewal of standing.

11 Q Has Professor Jackson received any accommodations,
12 promotions, benefits, since the events giving rise to this
13 suit?

14 A His designation as Distinguished Research
15 Professor has been renewed. Reaffirmed.

16 Q When was it reaffirmed?

17 A Either the fall of 2020 or the spring of 2021. It
18 was -- yeah, during that period. I don't remember the exact
19 day.

20 Q What was the title you said, Dean?

21 A Distinguished Research Professor.

22 Q And has that title been taken away from Professor
23 Jackson, to your knowledge?

24 A No. Again, it's been reaffirmed.

25 Q It's been reaffirmed?

1 A Yes.

2 MS. CORBELLO: Nothing further, Your Honor?

3 THE COURT: Any questions?

4 CROSS-EXAMINATION

5 BY MR. ALLEN:

6 Q Good afternoon, Dean Richmond.

7 A Good afternoon.

8 Q Early evening. You said it was not the intent of
9 the ad hoc panel to put the journal on pause. Is that the way
10 you put it?

11 A Well --

12 MS. CORBELLO: Objection. Misstates the
13 testimony.

14 THE COURT: Overruled.

15 BY MR. ALLEN:

16 Q I'll ask you to state the testimony in your own
17 words. You said it was not the intent of the journal --
18 excuse me -- the ad hoc panel to end the journal?

19 A The -- the report recommendations begin with the
20 recommendation of the journal continuing, not that it be
21 dissolved.

22 Q Did the journal continue, however?

23 A It -- it is continuing. We are -- there are
24 subsequent recommendations we are now following in order to
25 ensure that it continues in a manner --

1 Q Is a journal that doesn't publish anything for 15
2 months despite having a pipeline of articles, continuing?

3 MS. CORBELLO: Objection. Assumes evidence not in
4 the record about a pipeline of articles.

5 MR. ALLEN: Professor Jackson testified to this.

6 THE COURT: Overruled. Overruled.

7 THE WITNESS: So I'm happy to answer the question,
8 but it will take a little bit. So may I just unpack
9 this? So I think it has to do with timeline. Your
10 Honor, may I?

11 THE COURT: Go ahead.

12 THE WITNESS: Okay. Because I didn't want to
13 overstep.

14 THE COURT: Go ahead.

15 A So there -- there was some time that was required
16 simply for the ad hoc committee to be recruited, and for them
17 to do their work and to fashion their report. And that took
18 some number of those months that you just referenced, that are
19 the pause.

20 Then there was the time for the report to be
21 received, a response from Dr. Jackson to be fashioned and
22 submitted, and a response then back to Dr. Jackson and to the
23 college, keeping in mind this is all outside the college. So
24 that represents even more of those months, past all the way
25 through to March. So it -- that -- we then needed to

1 understand how best to proceed with searching for a new editor
2 and mount a call for a new editor, et cetera.

3 So it is true that it has taken some time. That
4 is true, I can confirm that.

5 BY MR. ALLEN:

6 Q Despite the intent of the panel, would you agree
7 that it has simply put a stop to the publications of the
8 journal?

9 A I would submit that the journal has not published
10 since Volume 12, yes, sir.

11 Q Thank you. Is there any intent now to publish the
12 articles that are in the pipeline on the part of the
13 University of North Texas press?

14 A There is an intent to reconstitute the editorial
15 process so that it can resume its work.

16 Q Is that no? Do you mean "no" by that?

17 A I'm sorry?

18 Q Do you mean no, there is no intent to publish the
19 pipeline of articles?

20 A No, I don't mean that at all. I'm trying to
21 describe the process as it's unfolding. I'm trying to do
22 justice to the question you're requesting.

23 Q All right. You also said that you know of no
24 statement to remove Timothy Jackson from the operations of the
25 journal. I believe something to that effect you testified

1 when your counsel asked you that question.

2 A Counsel asked me if I knew of any action on the
3 part of the -- I believe you said the board or any University
4 officer to remove him from -- I know of none.

5 Q And who's Benjamin Brand?

6 A He's the chair of music history, theory, and
7 ethnomusicology.

8 Q And is he an officer of the University?

9 A He's the chair of that division in the college of
10 music.

11 Q Does that mean yes, he is an officer of the
12 University?

13 A I don't know his legal standing. If it's officer,
14 I don't know.

15 Q He's under your supervision as Dean?

16 A He's under my supervision as Dean.

17 Q And your counsel and presumably you brought to
18 court today an affidavit by Dr. Brand, correct?

19 A Counsel brought that to you, yes.

20 Q And are you aware that in paragraph four of that
21 affidavit it states in a subparagraph a -- a statement that he
22 made in December of 2020: I cannot support a plan according
23 to which you -- referring to my client, Timothy Jackson --
24 would remain involved in the day-to-day operations of the
25 journal, and its editorial process in particular, given the

1 panel's findings of editorial mismanagement at JSS.

2 Is that stated in the affidavit that you brought
3 to court today?

4 A That statement -- I believe that statement is in
5 the affidavit that counsel brought today.

6 Q Isn't that a statement by an officer of the
7 University of North Texas indicating that Timothy Jackson
8 should be removed from the journal?

9 MS. CORBELLO: Objection. Misstates the evidence.

10 THE COURT: Overruled. He can answer whatever it
11 means to him.

12 A It means that he is representing his own position
13 on a question.

14 BY MR. ALLEN:

15 Q But his own position is also a position as an
16 officer of the University, correct? As a department chair of
17 the University?

18 A As a department chair -- well, as a division
19 chair. We use a different terminology in the college, but
20 it's a reasonable synonym, yes.

21 Q Also, considering Ellen Bakulina signed multiple
22 petitions that called for the destruction of the journal,
23 would you as an overseer of the college of music -- and I
24 assume you care about music deeply is that a safe assumption?

25 A It is a safe assumption, yes, sir.

1 Q Would you appoint someone to a search committee,
2 say for a department chair or the Dean, who had already sworn
3 to destroy the college of music?

4 MS. CORBELLO: Objection, vague, misstates the
5 evidence.

6 THE COURT: Well, I'm not sure it misstates the
7 evidence, it's a hypothetical. It's overruled.

8 A No.

9 BY MR. ALLEN:

10 Q You said no, am I right?

11 A Yeah, no.

12 MR. ALLEN: No further questions, Your Honor.

13 THE COURT: Anything else?

14 MS. CORBELLO: No, Your Honor.

15 THE COURT: Let me ask a couple of questions and
16 make sure I know what's going on.

17 So the ad hoc committee in the process had been
18 replaced by the University, I assume by the order of the
19 Provost --

20 THE WITNESS: Yes.

21 THE COURT: -- to reconstitute the board with a
22 new editor who will then go ahead and appoint the
23 editorial board.

24 THE WITNESS: Let me -- let me -- may I just amend
25 that slightly, Your Honor?

1 THE COURT: Yes, go ahead.

2 THE WITNESS: Thank you.

3 So I think you -- you conflated the charge with
4 the outcome. If I could just kind of separate those a
5 little bit.

6 So the charge of the committee was to determine
7 the processes that were followed in the production of
8 Volume 12 in the Journal of Schenkerian Studies, and to
9 make recommendations going forward and -- and the
10 recommendations then were in part what you just
11 summarized. But the charge is slightly different, so I
12 just wanted to make that clarification if I could.

13 THE COURT: But the process going on now is you're
14 taking applications for an editor position for JSS
15 that -- of course, there's been no applications for that,
16 but once the editor position is filled, the editor will
17 appoint additional -- the editor-in-chief will appoint
18 editors, and then the journal will continue at that
19 point.

20 THE WITNESS: It's an important and crucial point.
21 So the -- the editorial board will be constituted per the
22 recommendations of the editor as opposed to the -- I mean
23 that's not a -- that those decisions would not abused,
24 nor would it be the chair, or other persons that -- those
25 decisions will be vested in the editor.

1 THE COURT: But as things currently stand, until
2 an editor-in-chief is -- applies and gets appointed, the
3 journal isn't going to be published.

4 THE WITNESS: That's correct.

5 THE COURT: So although you indicated that
6 Mr. Jackson is still an editor, as it currently stands --

7 THE WITNESS: He's a board member as it currently
8 stands. Right.

9 THE COURT: But he has no power to do anything.
10 He can't publish anything. They can't do -- they are
11 not -- the University does not permit another volume of
12 the journal or chapter to be published.

13 THE WITNESS: The journal is on pause, yes, sir,
14 until a new editor is identified and retained.

15 THE COURT: So to be clear, the University
16 wouldn't allow Mr. Jackson to do another issue of the
17 journal until this other process plays out. I mean --

18 THE WITNESS: That's the position of the
19 institution as I understand it. We're on pause.

20 THE COURT: Thank you.

21 THE WITNESS: You're welcome. Thank you.

22 THE COURT: Anything else from the University?

23 MS. CORBELLO: No, Your Honor.

24 THE COURT: Okay. Anything else you want to put
25 on?

1 MR. ALLEN: We have no further evidence, but just
2 like to say, Your Honor --

3 THE COURT: If you can go to the podium.

4 MR. ALLEN: -- briefly in closing, and I want to
5 say thank you, Your Honor, I was extremely delayed in
6 getting to the court. I apologize to that and I
7 appreciate the Court's time.

8 THE COURT: I can't imagine flying in all this
9 wind. So I don't know if the Defendants flew up or drove
10 up. I'm sure it was kind of bumpy coming from Dallas.

11 MR. ALLEN: My younger brother did graduate from
12 Plano High School and it's been 30 years since I've lived
13 in this area.

14 THE COURT: I know it's changed significantly in
15 the last 30 years, I can tell you that.

16 MR. ALLEN: And I was so clueless at that time, I
17 wouldn't have even known where to begin anyway.

18 But if Your Honor were to hold that there was no
19 harm done to Timothy Jackson in this instance, you would
20 have to hold that someone who had worked his whole life
21 and had a position of importance and had built a
22 mentoring institution around this journal could be
23 deprived of that position in a cancellation attack. And
24 --

25 THE COURT: Let me ask you a question.

1 MR. ALLEN: Yes.

2 MR. CAMPOS: He agreed to some of the
3 recommendations and agreed to this process for the ad
4 hoc, or endorsed it. How does that impact the decision
5 here?

6 MR. ALLEN: Well, first of all, I don't believe
7 that he did endorse the ad hoc panel's --

8 THE COURT: So how would you describe what he did?

9 MR. ALLEN: I would say he was proposing a
10 solution that would safeguard academic freedom and the
11 freedom of speech, which has been simply overruled and
12 rolled over by Provost Cowley, Dean Richmond, and other
13 officers of the University. Because they are not
14 concerned about the freedom of speech, they were
15 concerned about proving Timothy Jackson a racist and
16 somehow creating a search committee that by its very
17 constitution would never -- would never find anyone, and
18 thus -- thus eliminate the journal.

19 And the context down the line, Your Honor, I'll
20 come back to your point, but he's going to be
21 evaluated -- the Center is going to be evaluated based on
22 the fact that he can no longer maintain the journal. And
23 he -- he will die by a thousand cuts. It will be an
24 administrative suffocation at the end of his career,
25 which quite frankly we see throughout the industry at

1 this time.

2 But -- but to your point, he wanted to reach out
3 to people who were dedicated to Schenkerian analysis. He
4 was doing that as an -- on an individual basis to recruit
5 as he did at the beginning of the foundation of the
6 journal, the editorial board who was committed to this
7 very specialized areas of scholars. But we understand,
8 Your Honor, that outside this specialized world, no one
9 has ever heard of Schenkerian analysis. But that's kind
10 of how scholarship works. That's why there's a protected
11 sphere for tenured professors to pursue things that are
12 not of interest to the larger community. What the
13 University of North Texas has done is not just put things
14 on pause, not even just put them on ice. They've
15 eliminated this journal based on spurious claims of
16 racism.

17 THE COURT: How does the Court redress -- just
18 assume there is an injury, how does the Court redress
19 that injury?

20 MR. ALLEN: I would think the Court can order the
21 University of North Texas to restore Timothy Jackson --

22 THE COURT: Well, doesn't the University have a
23 lot of discretion in terms of the process of setting
24 up -- you know, I mean it's giving up their own
25 editor-in-chief and doing that and --

1 MR. ALLEN: Well, the University does have --

2 THE COURT: The only relief the Court has -- and I
3 mean I'm just -- does the Court have the power to tell
4 them they have to -- until they reconstitute it, he has
5 to -- he's allowed to continue to publish? I mean I'm
6 just trying to figure out what the remedy is if you can
7 show the injury.

8 MR. ALLEN: Well, Your Honor, first of all the ad
9 hoc panel is purely retaliation against Timothy Jackson
10 for the exercise of his free speech. There are other
11 journalists at the University of North Texas such as
12 Theoria, and I -- I recognize this gets us beyond the
13 evidence that's available in this hearing, but would be
14 happy to supplementally brief that for the Court. They
15 did exactly what Timothy Jackson's journal was accused of
16 doing; publishing without peer review, publishing your
17 own articles, even citing Wikipedia -- all of these
18 things. There's absolutely no interest in disciplining,
19 investigating, any of those people. They constituted the
20 ad hoc panel outside of any recognizable policies or
21 procedures of the University simply to target Timothy
22 Jackson. He was the sole person who the ad hoc panel
23 addressed. Not the editorial board, not Steven Slottow
24 who's fellow managerial editor. And the University could
25 be ordered by the Court to restore Timothy Jackson to his

1 previous position. Restore the resources which have been
2 now taken away from Timothy Jackson.

3 THE COURT: But he's still in the same position.
4 He was on the board, he's still on the board, albeit to a
5 journal that has been put on pause.

6 MR. ALLEN: Using the University's euphonism.

7 THE COURT: Isn't his position the same? Yes, the
8 journal has been put on pause, but he's still on the
9 board technically.

10 MR. ALLEN: Well, I would -- I would suggest to
11 the Court that his position on the board was not simply
12 of a equal member with all the other members of the
13 board. There was a clear division between readers, who
14 were certainly associated with the board, and the two
15 professors who were, for lack of a better term, managing
16 board members. They were managing the publication. And
17 the way that academia works to -- a very junior scholar
18 is very exposed. Exposed for some of the reasons why
19 Levi Walls felt compelled to issue apologia to the world
20 when he was attacked for his activities on the journal,
21 and Steven Slottow and Timothy Jackson stood there as a
22 wall to protect them, to give them authority. But they
23 could have never assumed or carried out those positions
24 without that authority standing behind them, in the
25 structure that Timothy had organized for the journal.

1 And quite frankly, that had produced several waves of
2 very successful scholars who were launched in their
3 careers by the journal. It was a formula that worked and
4 a structure that worked, which the attack on academic
5 freedom that the University of North Texas under this
6 man's guidance simply allowed to happen without doing
7 anything to stop it. Instead, they aided and abetted it
8 by organizing an ad hoc panel that simply shut the
9 journal down. That's what's happened here.

10 So I think he could be ordered to reassume his
11 position. He could -- the University could be ordered to
12 restore the resources to the journal and the Center that
13 has been now taken away. Certainly, the Court's have
14 intervened much more deeply in say, the prison system,
15 and that would require the University to intervene in --
16 in the journal or in UNT.

17 THE COURT: And then what did the Board of Regents
18 do to cause Mr. Jackson or Professor Jackson's injury?

19 MR. ALLEN: I believe this goes to a
20 jurisdictional question under the ex parte young
21 doctrine, Your Honor. And the Board of Regents stand in
22 for the highest authority of the University who had the
23 authority to rectify the -- the -- the wrong that has
24 been done to my client. And I think it's very common
25 under ex parte Young to sue people who are not directly

1 involved in the commission of a wrong, simply to cast a
2 wide net and make sure you get people who are themselves
3 responsible.

4 So for instance, in another context, Your Honor, I
5 have sued the University of Connecticut. I named the low
6 level administrator who had actually wronged my client,
7 but I was told I had to amend the complaint to add an
8 individual who had the authority to change the situation
9 under the ex parte Young doctrine. Counsel and I agreed
10 who that could be, and that was rectified that way. But
11 on my fee petition I never got any payment for making
12 that mistake.

13 But Your Honor, the board members stand in for
14 those who have the authority to rectify the mismanagement
15 of the University. If we were to need to amend to add
16 another party, we could certainly do that. For instance,
17 Dean Richmond who has appeared today, or perhaps the
18 chair of the department. The problem is often the
19 defense runs into court and says they don't have ultimate
20 authority, and then you have to sue the board anyway.
21 That's why they are there. They are there as the
22 ultimate supervising authority of the University.

23 THE COURT: Then can I ask you a question not
24 related to -- anything else you want to say on -- for
25 purposes of the hearing?

1 Okay. I do have a question on the -- I have
2 pending -- it got transferred from miscellaneous case to
3 a Motion to Quash subpoenas, and Motion for Protective
4 Order. I was curious why you were asking things be
5 produced in Fort Worth which have no ties whatsoever to
6 anything here.

7 MR. ALLEN: Oh, I believe that was done by my
8 co-counsel, Your Honor, to have the documents produced
9 there so that -- I think that was a law firm that he uses
10 to receive documents in that way. I can't answer for
11 Jonathan Mitchell to answer that more precisely, but I
12 think that was simply a formality, especially in a pure
13 document discovery that it was never expected that an
14 actual deposition or appearance at that location would
15 take place. I do believe it was within the -- within the
16 rules to have a person appear within that distance.
17 Isn't it 100 miles I believe under the federal rules?
18 That was never --

19 THE COURT: Well, neither the parties, movants, or
20 counsel are in that region, so that's why I was just
21 curious.

22 MR. ALLEN: And I believe Jonathan Mitchell's law
23 office is in Austin and that's -- that's another reason
24 why it was -- he has no office here in the Dallas/Fort
25 Worth area. Nor do I, unfortunately.

1 THE COURT: No, I know.

2 Okay. Then I'll give --

3 MS. CORBELLO: Would you like me at the podium,
4 Your Honor?

5 THE COURT: Yeah, that would be great.

6 Let me just ask -- the Board of Regents is the
7 governing body for UNT, correct?

8 MS. CORBELLO: Yes, Your Honor. However, given
9 that that's the Court's first question, I'll go ahead to
10 the ex parte Young argument that counsel made a second
11 ago. He conceded a very important point, that they've
12 been placed here as a standard for some higher authority
13 that they don't know what that is at this point. That is
14 the opposite of what the ex parte Young doctrine allows.

15 In many cases -- City of Austin v Paxton, In Re
16 Abbott out of the Fifth Circuit, both of which -- both of
17 which have addressed this issue, both require the
18 enforcement after themselves to be the ones that the
19 Court issues relief against.

20 In City of Austin the Court said for the ex parte
21 Young exception to apply, the state official must have
22 some connection with the enforcement of the challenged
23 act or as the suit is merely making him a party as a
24 representative of the State, and thereby attempting to
25 make the State a party. It's essentially what counsel is

1 doing here, having some State actor stand in, and then
2 have the Court figure out who would actually provide Mr.
3 Jackson the relief. Ex parte Young does not go that far.

4 As to the ad hoc panel retaliation claim that
5 Mr. Jackson has now raised for the first time, that's not
6 a claim in this case that the ad hoc panel creation is
7 somehow retaliation for First Amendment rights. I'll
8 point out that it was the Provost that created that ad
9 hoc committee, not any defendant in this suit currently,
10 and it was the ad hoc committee that issued
11 recommendations. Again, none of which are defendants in
12 this suit. That is not a claim that is viable or that
13 can go forward at this point.

14 What Mr. Jackson has told this Court today is that
15 he is currently on an editorial board, and it's on ice
16 because the journal needs an editor. He never told this
17 Court that he is allowed to as an editorial board member
18 publish articles as he wants. The journal needs an
19 editor. And until an editor comes to power, there can be
20 no editorial board that is helping publish a volume under
21 the JSS.

22 THE COURT: So you admit that his position has
23 changed. Maybe he's still on the board, but he has no
24 ability to actually publish anything.

25 MS. CORBELLO: No, Your Honor, there was never any

1 testimony that Mr. Jackson could publish something under
2 the JSS without an editor at the helm. As he told this
3 Court, there was an editor at all times when they were
4 publishing volumes under the JSS. And as that continues,
5 an editor needs to be appointed before publications can
6 occur again. Nothing --

7 THE COURT: Who was the editor before, when the
8 last issue came out?

9 MS. CORBELLO: I don't recall the name off the top
10 of my head. I'm sure Professor Jackson knows. I believe
11 it was student editors at that point.

12 THE COURT: Right. But what I'm saying is
13 Professor Jackson doesn't have the power at this point to
14 have someone else serve as the editor, pending the
15 process to get a permanent one.

16 MS. CORBELLO: Your Honor, Professor Jackson
17 didn't have the power to require someone to serve as the
18 editor before this lawsuit or before the events.

19 THE COURT: Well, who appointed the previous
20 editors?

21 MS. CORBELLO: I don't believe Professor Jackson
22 testified to that.

23 THE COURT: No, I'm asking you.

24 MS. CORBELLO: I'm not aware, Your Honor. The
25 jurisdictional burden rests with Plaintiff. Plaintiff

1 did not testify to this Court that he had the power to
2 appoint editors to the JSS

3 THE COURT: I understand that. But I asked you a
4 question. If you don't know the answer, that's fine.
5 Tell me you don't know the answer. But you don't know
6 the answer?

7 MS. CORBELLO: No, Your Honor.

8 THE COURT: Okay. That's all you have to say.

9 MS. CORBELLO: Well, this just goes back to the
10 Court's question as to whether his obligations or duties
11 have changed moving forward. No, there's been no
12 evidence to this Court, there's no evidence in the
13 briefing or exhibits before the Court that anything in
14 Professor Jackson's function as an editorial board member
15 has changed since the events. He was not -- there's no
16 evidence he was able to appoint an editor, there was no
17 evidence that he was able to publish without an editor.
18 So those are not injuries that are cognizable in this
19 case. The only injury that Professor Jackson has alleged
20 is that he made recommendations that the ad hoc committee
21 didn't fully adopt. That is again not a cognizable
22 injury. It's a disappointment, but it is not retaliation
23 for exercise of First Amendment rights.

24 To clarify, the Court cannot issue the relief that
25 Professor Jackson is requiring. If the Court were to

1 essentially force UNT to maybe hire an editor, or just
2 allow the journal to start publishing without an editor,
3 either way that's compelled speech. An injunction cannot
4 compel the University to speak by requiring a journal to
5 exist and to publish. And because the journal can't be
6 required to quicken its editor search or publish without
7 an editor, Professor Jackson can't be -- well, he's on
8 the editorial board so the Court can't put him on the
9 editorial board either. There's no action, there's no
10 reject ability in this case at this point. And so for
11 these reasons, defendants ask the Court to grant the
12 12(b)(1).

13 THE COURT: Okay. Thank you.

14 Okay. Anything else from anybody?

15 I know this is longer or later than we thought we
16 would because of starting late. And I apologize for my
17 jury coming back late. But I have another hearing after
18 your hearing, I had to bump that. I wasn't going to get
19 to that, some discovery disputes.

20 MR. ALLEN: It's the nature of the process that we
21 always want to get the last word in, Your Honor, but we
22 appreciate your time today and I think we should rest.

23 THE COURT: Okay. Very good.

24 Well, I'm going to take the matter under
25 advisement, but I appreciate -- it's unusual -- usually

1 if you have a factual dispute about -- and I'm not sure
2 there's really a dispute, it's kind of a nuance, and it's
3 a question of whether or not -- I'm just not sure how I
4 evaluate that legally. That's the issue. I don't know
5 that the facts are really in disagreement, I think it's a
6 question -- although he's still on the editorial board,
7 nothing is happening and the journal is on ice. The
8 question is how do I apply the law to that. I'll
9 certainly look at that and see where we go.

10 And we're also at the beginning stages, too,
11 that's a question I have is, you know, at 12(b)(1) stage
12 versus later in the case. I just don't know.

13 So thank y'all for your arguments, I appreciate
14 it. You both have zealously represented your clients, I
15 like that. So it was a good discourse and I'll take it
16 under advisement.

17 Anything else I can do for the parties?

18 MS. CORBELLO: No, Your Honor.

19 THE COURT: Okay. Well, y'all have safe travels
20 back to your destinations, and we'll be in recess.

21 (End of proceedings)
22
23
24
25

1 I certify that the foregoing is a correct transcript from the
2 record of proceedings in the above-entitled matter.

3
4 /s/ Lori Barnett
COURT REPORTER

4/5/22
DATE